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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,685	12/14/2001	Scott West	9222.17412-CIP 1	9542

7590

09/26/2003

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EXAMINER

THANH, LOAN H

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 09/26/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/017,685

Applicant(s)

WEST ET AL. *cd*

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.

4a) Of the above claim(s) 4,7,11,12,15,18,23,26,30,31,34,37,40,43,45 and 46 is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8-10,13,14,16,17,19-22,24,25,27-29,32,33,35,36,38,39,41,42 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

U.S. Patent and Trademark Office  
PTOL-326 (Rev. 04-01)

**Office Action Summary**

Part of Paper No. 10

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election of species 4( figs. 4A-4E) in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 4,7,11-12,15,18,23,26,30-31,34,37,40,43,45-46 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention or species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9.

The generic claims are :1-2,5-6,9,13,16-17,20,21,24-25,28,32,35-36,39,42.

An action on the merits now follows.

### *Priority*

Priority will be granted to applicant if the current application is a continuation of the non-provisional application filed under 119(e) to 60/278738 filed 03/26/01.

It is unclear whether applicant is intending to claim CIP priority.

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: actuator mechanism ( 21) in fig. 4A-4E. See page 16,line 26. A proposed

drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,5-6,.8-9,13-14, 16-17,19-22,24-25,27,28,32,33,35-36,38-39,41-42,44 are rejected under 35 U.S.C. 102(b) as being anticipated by Bradley et al. (U.S. Patent No. 5,626,128).

Bradley et al. disclose an apparatus (10) having a bite block and first and second gripping jaws (44). The actuator/squeeze clamp is considered the lip of the ring. All the functional language is met since the apparatus is capable of performing the function.

Claims 1-3,5-6,8,9-10,13-14,16-17,19-22,24-25,27,28-29,32-33,35-36,38-39,41,-42,44 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogers et al. ( U.S. Patent No. 5,555,881).

Rogers et al. disclose an apparatus having a bite block and first and second gripping jaws carried by the bite block. The device of Rogers et al. is capable of performing the function of the claimed limitations. See figures 9-10, 13-17. Columns 4-5. Specifically Rogers et al. disclose the jaws preferably formed of a material which


allows for resilient expansion.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Monday to alternating Fridays (7:00 am-4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

LT